A

MOTI RAM

v.

PARAM DEV AND ANR.

MARCH 5, 1993

B

[S. RATNAVEL PANDIAN AND S.C. AGRAWAL, JJ.]

Representation of the Peoples Act, 1951 : Section 116- A—Election petition challenging applicant's election to the State Legislature Assembly—Allowed—Dissolution of the Legislation of the Legislative Assembly pending appeal to this court—Effect of.

C

Representation of the Peoples Act, 1951—Section 36(1)(2)—Requirement of the candidate of being qualified for being chosen to fill the seat on the date filed for scrutiny of nomination—Resignation from the office of Chairman in far take effect from the date of the date of the communication for the Head of the Department in the Government.

D

For election to the Himachal Pradesh Legislative Assembly from 60-Chachiot Assembly Constituency held during February, 1990, fifteen persons, including the appellant and one Karam Singh, filed nomination papers. At the time of scrutiny, an objection was raised against the nomination of Karam Singh on the ground that he was holding the office of Chairman, Himachal Pradesh Khadi and village Industries Board, which is an office of porfit within the meaning of Article 191(1)(a) of the Constitution and was, therefore, disqualified for being chosen as a member of the Legislative Assembly. The Returning Officer upheld the objection and rejected the nomination of Karam Singh. The appellant was declared elected to the Legislative Assembly from the said Constituency. His election was challenged by the Respondents by filing election petitions in the High Court of Himachal Pradesh. The High Court found that the said rejection of nomination of Karam Singh was improper because on the date of scrutiny Karam Singh was not holding an office of profit and for that reason, the election of the appellant was set aside.

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The appellant herein filed the present appeals under section 116-A of the Representation of the People Act, challenging the judgment of the High Court of Himachal Pradesh.

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During the pendency of the appeals the Himachal Pradesh Legislative Assembly was dissolved. A

After considering the appeals on merits the Court, which dismissing the appeals,

HELD : 1. Inspite of the dissolution of the Himachal Pradesh Legislative Assembly the question arising for consideration cannot be said to have become academic because the invalidation of the election of the appellant may give rise to the liability to refund the allowances received by the Appellant. [253G, 255-B] B

Loknath Padhan v. *Birendra Kumar Sahu*, [1974] 3 SCR 114, distinguished. [253G] C

2.01. 'Resignation' means the spontaneous relinquishment of one's own right and in relation to an office, it cannotes the act of giving up or relinquishing the office. The act of relinquishment may be unilateral or bilateral depending on the return of the office and the conditions governing it. [260F] D

2.02. If the act of relinquishment is of unilateral character, it comes into effect when such act indicating the intention to relinquish the office is communicated to competent authority. The authority to whom the act of relinquishment is communicated is not required to take any action and the relinquishment takes effect from the date of such communication where the resignation is intended to operate *in praesenti.* [260G] E

2.03. In cases where the act of relinquishment is of a bilateral character, the communication of the intention to relinquish, by itself, would not be sufficient to result in relinquishment of the office and some action is required to be taken on such communication of the intention to relinquish, e.g., acceptance of the said request to relinquish the office, and in such a case the relinquishment does not become effective or operative till such action is taken. [260H, 261A-B] F G

3.01. From the provision of Section 7 of the H.P. Khadi and Village Industries Board Act, 1966, (the 'Act') it would appear that the act of relinquishment of the office of Chairman of the H.P. Khadi and Village Industries Board (the Board) is unilateral in character and the resignation from the said office takes effect when it is communicated without any H

A **further action being required to be taken on the same. Since the Chairman of the Board is nominated by the Government of Himachal Pradesh under Section 4(2) of the Act, resignation has also to be communicated to the Government of Himachal Pradesh i.e. the Head of the Department dealing with the Board, and once it is so communicated it takes effect from the** B **date of such communication if the resignation is *in praesenti* or from the date indicated therein if it is prospective in nature to be operative from a future date. [263G-H, 264A-B]**

3.02. The resignation of Karam Singh as Chairman of the Board was not required to be accepted by the Government of Himachal Pradesh. It C **became effective on January 31, 1990 when the letter of resignation was received by the Financial Commissioner-cum-Secretary (Industries) to the Government of Himachal Pradesh who was the Head of the Department dealing with the Board and to whom it was addressed. [265D]**

3.03. Since there is no requirement in the Act that the resignation of D **the Chairman of the Board should be notified in the Official Gazette as in the case of a member of the Board, it cannot be said that the resignation of Karam Singh did not take effect till it was notified in the Official Gazette vide notification dated February 12, 1990. [265E]**

E *Central Inland Water Transport Corporation Limited and Another* **v.** *Brojo Nath Ganguly and Anr.*, **[1986] 2 SCR 273;** *J.K. Cotton Spinning and Weaving Mills Company Ltd.* **v.** *State of U.P. & Others,* **[1990] 3 SCR 523;** *Lala Ram* **v.** *Gauri Shanker,* **1981 All. Law 1982;** *Raj Kumar* **v.** *Union of India*, **[1968] SCR 857;** *Union of India* **v.** *Shri Gopal Chandra Misra & Ors.*, **[1978] 3 SCR 12 at p. 21 and** *Glossop* **v.** *Glossop,* **1907, 2 Ch. 370,** *Halsbury's Law of* F *England* **4th Ed., Vol. 7, p. 316, para 536, relied on. [260D-G, 261G, 262G]**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2640-41 of 1991.

G From the Judgment and Order dated 3.6.1991 of the Himachal Pradesh High Court in Election Petition Nos. 1 & 2 of 1990.

A.K. Ganguli, B.T. Kaul, Sarvesh Bisaria and S.K. Bisaria for the Appellant.

H B. Dutta and R. Sasiprabhu for the Respondents.

The Judgment of the Court was delivered by A

S.C. AGRAWAL, J. These appeals have been filed under section 116-A of the Representation of the People Act, 1951. They relate to election to the Himachal Pradesh Legislative Assembly from 60- Chachiot Assembly constituency held during February, 1990. The appellant was declared elected to the Legislative Assembly from the said constituency. His election was challenged by the respondents in these appeals by filing election petitions in the High Court of Himachal Pradesh. By its judgment dated June 3, 1991, the High Court has allowed the election petitions and has set aside the election of the appellant on the ground that the nomination of one of the candidates, Shri Karam Singh was improperly rejected by the returning officer. B C

The last date for filing the nomination papers was February 2, 1990 and the scrutiny of the nomination papers was fixed for February 5, 1990. Fifteen persons, including the appellant and Shri Karam Singh had filed nomination papers. At the time of scrutiny, an objection was raised on behalf of one of the candidates against the nomination of Shri Karam Singh on the ground that he was holding the office of Chairman, Himachal Pradesh Khadi and Village Industries Board, which is an office of profit within the meaning of Article 191(1)(a) of the Constitution and was, therefore, disqualified for being chosen as a member of the Legislative Assembly. By order dated February 7, 1990, the Returning Officer upheld the said objection and rejected the nomination of Shri Karam Singh. The High Court has, however, found that the said rejection of nomination of Shri Karam Singh was improper because on the date of scrutiny Shri Karam Singh was not holding an office of profit and has, for that reason, set aside the election of the appellant. D E F

Before we proceed to deal with the appeals on merits, it may be mentioned that during the pendency of these appeals before this court, the Himachal Pradesh Legislative Assembly has been dissolved. This raises the question whether the matters in issue in these appeals have ceased to be living issues and have become wholly academic. The effect of dissolution of the legislature on a pending election appeal has been considered by this court in *Loknath Padhan* v. *Birendra Kumar Sahu,* [1974] 3 SCR 114. In that case, the election of the returned candidate was challenged before the High Court on the ground that there was a subsisting contract entered into G H

A by the respondent in the course of his trade and business with the State Government for the execution of works undertaken by the Government and he was, therefore, disqualified under section 9A of the Representation of the People Act, 1951. The election petition was, however, dismissed by the High Court and while the appeal against the said decision was pending in this Court, the Legislative Assembly was dissolved. A preliminary objection B was raised on behalf of the respondent to the appeal that in view of the dissolution of the assembly it was academic to decide whether or not the respondent was disqualified under section 9A. Upholding the said preliminary objection, this court has held that the court should not undertake to decide an issue unless it is a living issue between the parties and if an issue C is purely academic, in that its decision one way or the other would have no impact on the position of the parties, it would be waste of public time and indeed not proper exercise of authority for the court to engage itself in deciding it. In that case, this court drew a distinction between a case where the challenge to the election is on a ground confined to the validity of that D election only and having no consequences operating in future and a case involving challenge to the election on a ground which would entail electoral disqualification for the future, such as, charge of corrupt practice. It was held that if the election is challenged on the ground of commission of a corrupt practice the dissolution of the legislature would not have any effect on the pendency of an election petition or an appeal arising therefrom and E the said petition will have to be considered on its merits whereas a challenge to the election on any other ground which does not entail future disqualification would raise academic issue only and in view of the dissolution of the legislature the election petition or the appeal arising therefrom would not survive because it would be futile and meaningless for the court F to decide an academic question the answer to which would not affect the position of one party or the other.

Although in the instant case the election is not challenged on the ground of commission of any corrupt practice and a finding would not result in electoral disqualification in future but the present case differs G from the case of *Loknath Padhan* v. *Birendra Kumar Sahu* (supra) in the sense that in *Loknath's* case the election petition was dismissed whereas in the present case the election petitions against the election of the appellant have been allowed and the election has been set aside. It has been submitted by Shri A.K. Ganguli, the learned Senior counsel appearing on H behalf of the appellant, that in view of the fact that the decision of the High

Court setting aside his election, the appellant may be required to refund the various allowances that he has received while he was functioning as a member of the Legislative Assembly after his election till the decision of the High Court. It would thus appear that invalidation of the election of the appellant may give rise to the liability to refund the allowances received by the appellant as a member of the Legislative Assembly. It cannot, therefore, be said that the question arising for consideration in this appeal are purely academic in nature. In these circumstances, it becomes necessary to go into the merits of these appeals.

The relevant facts relating to the rejection of the nomination of Shri Karam Singh are as under.

The Himachal Pradesh Khadi and Village Industries Board (hereinafter referred to as 'the Board') has been established by the Government of Himachal Pradesh under Section 3 of H.P. Khadi and Village Industries Board Act, 1966 (hereinafter referred to as 'the Act'). Section 4 provides for the constitution of the Board and in sub-s. (1), it is laid down that the Board shall consist of not less than three and not more than nine members appointed by the Government of Himachal Pradesh after consultation with the Khadi and Village Industries Commission from amongst non-officials who in the opinion of Government of Himachal Pradesh have shown active interest in the protection and development of khadi and village industries and officials. In sub-s. (2) of Section 4 it is provided that the Government of Himachal Pradesh shall after consultation with the Khadi and Village Industries Commission, nominate one of the members of the Board to be the Chairman thereof, Section 7 makes provision for resignation of office by members. Section 11 provides that the term of office and terms and conditions of service of the Chairman, Vice-Chairman, Secretary and other members shall be such as may be prescribed. In exercise of the powers conferred by Section 35 of the Act, the Government of Himachal Pradesh has made the Himachal Pradesh Khadi and Village Industries Board Rules, 1966 (hereinafter referred to as 'the Rules'). Rule 3 of the Rules prescribes that a member of the Board shall hold office for such period not exceeding three years as may be prescribed in the notification of his appointment which shall be notified in the Official Gazette and shall be eligible for re-appointment. Rule 7 provides for salary or honorarium and allowance payable to members. Sub-rule (1) of Rule 7 provides that the Chairman, the Vice-Chairman, the Secretary and other

A members of the Board shall be paid such salary or honorarium and allowances from the funds of the Board as the Government may from time to time fix. In sub- rule (2) of Rule 7, it is laid down that the Chairman, the Vice-Chairman, the secretary and other members of the Board shall also be entitled to draw travelling and daily allowances for journeys per-
B formed for attending the meetings of the Board or for the purpose of discharging such duties as may be assigned to them by the Board in accordance with the rules and orders issued by the Government from time to time at the highest rate admissible to Government servants of Grade I.

By notification dated September 2, 1982, issued in exercise of the
C powers conferred by Rule 7 of the Rules, the Governor of the Himachal Pradesh, ordered that the Chairman of the Board shall be entitled to pay and other allowances from the Funds of the Board at the following rates:-

(1) Pay/remuneration/honorarium of Rs. 1500 p.m. (consolidated).

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(2) Free electricity and water charges upto Rs. 1500 per year.

(3) Use of a car or in lieu thereof a conveyance allowance of Rs. 300 per month.

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(4) Telephone facilities in office and at residence.

(5) TA and medical expenses admissible to the officers of Highest First Grade category.

By notification dated December 27, 1986, the Governor of Himachal
F Pradesh constituted the Board with immediate effect. Under the said order, the Board consisted of nine members including Shri Karam Singh Thakur. By the said order the Governor of Himachal Pradesh also nominated Shri Karam Singh Thakur as Chairman of the said Board. By notification dated December 20, 1989, the term of the Board was extended
G upto December 26, 1990. On October 18, 1989, Shri Karam Singh Thakur wrote a letter to the Financial Commissioner-cum-Secretary (Industries) to the Government of Himachal Pradesh wherein it was stated that consequent upon amendment to Second Proviso to section (1) of section 6B of the Himachal Pradesh Legislative Assembly (Allowances and Pension of members) Act, 1971, his pension had been revised to Rs. 2400 per month
H with effect from February 4, 1989 and that on the basis of the said orders,

he was authorised by the Senior DAG(A&E), Himachal Pradesh, Shimla, by letter dated 6th July, 1989, to draw from Shimla Treasury the balance pension of Rs. 900 p.m. after adjusting the remuneration of Rs. 1500 which he had been drawing as remuneration from the Board and the pension of Rs. 900 p.m. plus relief due thereon from the Punjab National Bank through Treasury Officer, Shimla. By aforesaid letter, Shri Karam Singh intimated that he now intended not to draw the monthly remuneration of Rs. 1500 p.m. from the Board and that instead he would be drawing the gross pension of Rs. 2400 p.m. from the Treasury/Bank and he requested that no objection of the State Government to the said proposal may be conveyed to him at an early date. The said proposal made by Karam Singh was accepted by the Government of Himachal Pradesh and by notification dated January 8, 1990 issued under Rule 7(1) of the Rules, the Governor of Himachal Pradesh ordered that the remuneration of Rs. 1500 p.m. (consolidated) which was payable to the Chairman of the Board shall cease as per the request of the Chairman made vide his letter dated October 18, 1989. On January 31, 1990, Shri Karam Singh addressed a Letter to the Financial Commissioner-cum-Secretary (Industries) to the Governor of Himachal Pradesh in the following terms :-

> "I hereby resign from the membership and Chairmanship of the Himachal Pradesh Khadi and Village Industries Board. The resignation may kindly be accepted with effect from today i.e. 31st January, 1990".

On the basis of the letter of January 31, 1990, which was received on the same day, the matter was processed in the office of Financial Commissioner-cum-Secretary (Industries) and it was placed before the Chief Minister for his approval with the recommendation that the resignation of Shri Karam Singh, Chairman, may be accepted. The Chief Minister gave his approval on February 4, 1990. On February 12, 1990, a notification was issued in the following terms :-

> "In exercise of the powers vested in him under section 7 of the Himachal Pradesh Khadi and Village Industries Board Act, 1966, the Governor, Himachal Pradesh is pleased to accept the resignation of Shri Karam Singh Thakur, Chairman, H.P. Khadi and Village Industries Board, Shimla with immediate effect".

A In the meanwhile, Shri Karam Singh filed his nomination papers for election to the Himachal Pradesh Legislative Assembly from the 60-Chachiot Assembly constituency. The scrutiny of the nomination papers was held on February 5, 1990. An objection was raised against the nomination of Shri Karam Singh on behalf of one of the candidates, viz., Vir Singh, B on the ground that Shri Karam Singh was holding an office of profit and was disqualified for being chosen as a member of the Legislative Assembly. Shri Karam Singh was not present at the time of scrutiny but his proposer, Shri Mani Ram, Advocate, was present and he was requested to ensure the appearance of Shri Karam Singh before the Returning Officer on February 6, 1990 at 11.00 a.m. for hearing him in connection with the C objection. The Returning Officer also directed Tehsildar (Elections) to enquire from the Secretary of the Board about the remuneration and other allowances being drawn by Shri Karam Singh in his capacity as chairman of the Board. The report of the Tehsildar was placed before the Returning Officer. Shri Mani Ram, Advocate, as proposer of Shri Karam Singh also D submitted a reply to the Returning Officer on February 6, 1990 wherein it was stated that Karam Singh had resigned from the chairmanship on 29th or 30th of January 1990 and that the acceptance of the resignation was not knwon to Shri Karam Singh. By order dated February 7, 1990, the Returning Officer rejected the nomination of Shri Karam Singh on the view that were submission of the resignation unless it was accepted, could not be E taken as deemed to have been accepted and that Shri Karam Singh was holding an office of profit as his resignation had not been accepted upto February 5, 1990 which was the date for scrutiny, and that he was not eligible to seek election as a candiate for the Himachal Pradesh Legislative Assembly.

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Before the High Court, it was submitted on behalf of the petitioners in the election petitions (respondents herein) that Shri Karam Singh had resigned with effect from January 31, 1990 vide his resignation letter of the said date and the said letter takes effect from January 31, 1990 itself. The High Court accepted the said contention and held that the Act is silent G and contains no provision as to how and in what manner the resignation of the Chairman of the Board is to be accepted and therefore the holder thereof could bring his appointment to an end by resigning with effect from a particular date and he would then be deemed to have ceased to be Chairman from the date itself notwithstanding its acceptance on a later H date. The High Court was, therefore, of the view that Shri Karam Singh

held no office of profit whatsoever in the Board on the date of scrutiny, i.e., February 5, 1990 since he had tendered his resignation on January 31, 1990. The High Court, further, found that in view of the letter dated October 18, 1989 sent by Shri Karam Singh conveying his request of giving up the remuneration of Rs. 1500 per month (consolidated) which request was accepted by the State Government as per notification dated January 8, 1990, pursuant to which Shri Karam Singh ceased to be entitled to draw the abovementioned remuneration with effect from January 8, 1990, Shri Karam Singh was not entitled to remuneration which could be classified as 'profit' for the office of Chairman of the Board held by him and after January 8, 1990, it could not be said that Shri Karam Singh was holding an office of profit and therefore the disqualification for membership of the Legislative Assembly of Himachal Pradesh could not attach to him. For the reasons aforesaid, the High Court held that the nomination of Shri Karam Singh was wrongly rejected by the Returning Officer.

Shri Ganguli has assailed the findings recorded by the High Court on both the questions whereas Shri B. Datta, the learned senior counsel appearing for the respondents has supported the said findings.

It is not disputed that in view of the amendment introduced in clause (a) of sub-s. (2) of Section 36 of the Representation of the People Act, 1951 by Act 40 of 1961, the relevant date for determining whether a candidate was qualified or disqualified for being chosen to fill the seat under the various provisions of Constitution mentioned therein, including Article 191, is the date fixed for scrutiny of nominations. In the instant case the said date was February 5, 1990. It is, therefore, necessary to determine whether Shri Karam Singh was holding an office of profit on February 5, 1990.

In view of the findings recorded by the High Court, the following questions arise for consideration :

(1) Did Shri Karam Singh cease to hold the office of Chairman of the Board on January 31, 1990, the date on which he submitted his resignation from the said office or on February 12, 1990 when the notification about acceptance of his resignation with immediate effect was issued by the Government of Himachal Pradesh?

(2) Did the office of Chairman of the Board held by Shri Karam

A Singh cease to be an office of profit with effect from January 8, 1990 in view of the notification of the said date whereby the remuneration of Rs. 1500 p.m. (consolidated) payable to the Chairman of the Board had ceased to be payable to Shri Karam Singh?

B Shri Ganguli has urged that the resignation of Shri Karam Singh from the office of Chairman of the Board could be effective only after it was accepted by the Governor of Himachal Pradesh who had nominated him to the said office and till the acceptance of the said resignation, Shri Karam Singh continued to hold the office of the Chairman of the Board. The submission of Shri Ganguli is that acceptance of a resignation is necesary before it can be effective and since in the present case the resignation was accepted only by notification dated February 12, 1990, Shri Karam Singh continued as Chairman of the Board till that date and he was holding that office on the date of scrutiny, i.e., February, 5, 1990. In support of this submission Shri Ganguli has placed reliance on the decisions of this Court in *Central Inland Water Transport Corporation Limited and Another* v. *Brojo Nath Ganguly and Anr.*, [1986] 2 SCR 278 and *J.K. Cotton Spinning and Weaving Mills Company Ltd.* v. *State of U.P. & Others.*, [1990] 3 SCR 523 as well as the decision of the Allahabad High Court in *Lala Ram* v. *Gauri Shanker*, 1981 All. Law 1982. Having carefully considered the said contention of Shri Ganguli we find it difficult to accede to it.

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E As pointed out by this court, 'resignation' means the spontaneous relinquishment of one's own right and in relation to an office, it connotes the act of giving up or relinquishing the office. It has been held that in the general juristic sense, in order to constitute a complete and operative F resignation there must be the intention to give up or relinquish the office and the concomitant act of its relinquishment. It has also been observed that the act of relinquishment may take different forms or assume a unilateral or bilateral character, depending on the nature of the office and the conditions governing it. (See : *Union of India* v. *Shri Gopal Chandra Misra & Ors.*, [1978] 3 SCR 12 at p. 21). If the act of relinquishment is of G unilateral character, it comes into effect when such act indicating the intention to relinquish the office is communicated to the competent authority. The authority to whom the act of relinquishment is communicated is not required to take any action and the relinquishment takes effect from the date of such communication where the resignation is intended to H operate *in prasenti*. A resignation may also be prospective to be operative

from a future date and in that event it would take effect from the date indicated therein and not from the date of communication. In cases where the act of relinquishment is of a bilateral character, the communication of the intention to relinquish, by itself, would not be sufficient to result in relinquishment of the office and some action is required to be taken on such communication of the intention to relinquish, e.g., acceptance of the said request to relinquish the office, and in such a case the relinquishment does not become effective or operative till such action is taken. As to whether the act of relinquishment of an office is unilateral or bilateral in character would depend upon the nature of the office and conditions governing it.

Under the Constitution of India there are various offices which can be relinquished by unilateral act of the holder of the office and acceptance of resignation is not required, e.g., President [Article 56(a)]. Vice-President [Article 67(a)], Deputy Chairman of Rajya Sabha [Article 90(b)], Speaker and Deputy Speaker of Lok Sabha [Article 94(b)], Judge of the Supreme Court [Article 124(2)(a)], Judge of a High Court [Article 217 (1)(a)]. As regards member of either House of Parliament or a member of a House of Legislature of a State, originally, the position was that he could resign his office by unilateral act and the acceptance of resignation was not required. The requirement of acceptance of such resignation was introduced in Articles 101(3)(b) and 190(3)(b) by the Constitution (Thirty-Third Amendment) Act, 1974. Similarly in company law, a director of a company is entitled to relinquish his office at any time he pleases by proper notice to the company and acceptance of the resignation is not required. [See : *Glossop* v. *Glossop,* (1907) 2 Ch 370, *Halsbury's Law of England,* 4th Ed., Vol. 7, p. 316, para 536].

A contract of employment, however, stands on a different footing wherein the act of relinquishment is of bilateral character and resignation of an employee is effective only on acceptance of the same by the employer. Insofar as Government employees are concerned, there are specific provisions in the Service rules which require acceptance of the resignation before it becomes effective. In *Raj Kumar* v. *Union of India,* [1968] 3 SCR 857, it has been held :

> "But when a public servant has invited by his letter of resignation determination of his employment, his services

A normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority, and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority. Till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus paenitentiae but not thereafter". (p.860)

C Similarly, in *Central Inland Water Transport Corporation Ltd. and Anr.* v. *Brojo Nath Ganguly and Anr.* (supra) which related to an employee of a Government company jointly and wholly owned by the Central Government and two State Governments, it was observed -

D "A resignation by an employee would, however, normally require to be accepted by the employer in order to be effective. It can be that in certain circumstances an employer would be justified in refusing to accept the employee's resignation as, for instance, when an employee wants to leave in the middle of a work which is urgent or E important and for the completion of which his presence and participation are necessary. An employer can also refuse to accept the resignation when there is a disciplinary inquiry pending against the employee. In such a case, to permit an employee to resign would be to allow him to go away from the service and escape the consequences of F an adverse finding against him in such an inquiry. There can also be other grounds on which an employer would be justified in not accepting the resignation of an employee". (p.386)

G The same view was reiterated in *J.K. Cotton Spinning and Weaving Mills Company Ltd.* v. *State of U.P. & Ors.* (Supra) which also relates to a contract of employment.

The question whether the resignation of Shri Karam Singh from the office of Chairman of the Board was required to be accepted before it H became effective involves the question whether the act of relinquishment

of the office of Chairman is unilateral or bilateral in character. In order to answer this question it is necessary to consider the relevant provisions of the Act. The Act does not contain any provision for resignation of the office of Chairman of the Board but in Section 7, the following provision has been made with regard to the resignation of office by members -

> "7. Resignation of office by members - Any member may resign, his office by giving notice in writing to the Government of Himachal Pradesh and, on such resignation being notified in the Official Gazette by the Government of Himachal Pradesh, shall be deemed to have vacated his office".

In the aforesaid provision, there is no requirement that the resignation of a member should be accepted by any authority. What is required is that a member who wishes to resign his office as member should give notice in writing to the Government of Himachal Pradesh and such resignation takes effect when it is notified in the official gazette by the Government of Himachal Pradesh. This indicates that the act of relinquishment of the office of a member of the Board is bilateral in character in as much as the resignation takes effect only when such resignation is notified in the Official Gazette by the Government of Himachal Pradesh. There is no such requirement for relinquishing the office of Chairman of the Board. Section 4(2), however, provides that the Chairman of the Board has to be nominated from amongst the members of the Board. This means that the Chairman of the Board holds office so long as he is a member of the Board and if he ceases to be a member of the Board he also ceases to be the chairman of the Board. But the converse is not true. A Chairman of the Board may resign his office as Chairman but may continue as member of the Board. If he resigns only from the office of Chairman of the Board, there is no requirement that such resignation should be accepted by any authority or that any other action is required to be taken for the said resignation to be effective. It would, therefore, appear that the act of relinquishment of the office of Chairman of the Board is unilateral in character and the resignation from the said office takes effect when it is communicated without any further action being required to be taken on the same. Since the Chairman of the Board is nominated by the Government of Himachal Pradesh under Section 4(2) of the Act, resignation has

A also to be communicated to the Government of Himachal Pradesh, i.e., the Head of the Department dealing with the Board, and once it is so communicated it takes effect from the date of such communication if the resignation is *in presenti* or from the date indicated therein if it is prospective in nature to be operative from a future date. This means that the act
B of relinquishment of the office of Chairman of the Board differs from the act of relinquishment from the office of a Member of the Board in the sense that while the act of relinquishment of office of a Member is bilateral in character requiring certain action, namely, resignation being notified in the Official Gazette by the Government of Himachal Pradesh before it
C comes into effect, the act of relinquishment of the office of Chairman of the Board is unilateral in character. The decisions on which reliance has been placed by Shri Ganguli relating to contracts of employment where the act of relinquishment has been held to be bilateral in character requiring acceptance of the resignation, can, therefore, have no application to the present case where the act of relinquishment of the office of Chairman of
D the Board is unilateral in character.

Three possible situations involving resignation by a person holding the office of Chairman of the Board can be envisaged :

E (i) He may resign only from the office of the Chairman of the Board. In such a case if the resignation is *in presenti* it would take effect from the date of communication of the resignation to the Head of the Department in the Government of Himachal Pradesh it would take effect from the date as indicated in the said resignation if the resignation is prospective to be operative from a future date.

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(ii) He may resign only from the office of the member of the Board. This resignation would take effect from the date the resignation is notified in the Official Gazette by the Government of Himachal Pradesh and with effect from the said date the Chairman would cease to be a member of the
G Board. Since a person cannot continue as Chairman of the Board after he has ceased to be a member of the Board, he would also cease to be the Chairman of the Board from the date of his resignation as member of the Board is notified in the Official Gazette by the Government of Himachal Pradesh.

H (iii) He may resign both from the office of Chairman of the Board

as well as from the office of member of the Board. In such a case, his resignation from the office of Chairman of the Board would take effect from the date of communication to the Head of the Department in the Government of Himachal pradesh if it is *in praesenti* or from the date indicated therein if it is prospective to be operative from a future date. He would, however, continue to be a member of the Board till his resignation from the office of member is notified in the Official Gazette by the Government of Himachal Pradesh under Section 7 of the Act.

The instant case falls in the third category because Shri Karam Singh, by his letter dated January 31, 1990, resigned from the office of member as well as the office of Chairman of the Board and wanted the resignation to be accepted with effect from the same day, i.e., January 31, 1990. By notification dated February 12, 1990, it was notified that the resignation of Shri Karam Singh Thakur, as Chairman of the Board has been accepted by the Governor of Himachal Pradesh with immediate effect. In our opinion, the said notification dated February 12, 1990, proceeds under a misconception of the correct legal position. The resignation of Shri Karam Singh as Chairman of the Board was not required to be accepted by the Government of Himachal Pradesh. It became effective on January 31, 1990 when the letter of resignation was received by the Financial Commissioner-cum-Secretary (Industries) to the Government of Himachal Pradesh who was the Head of the Department dealing with the Board and to whom it was addressed. Since there is no requirement in the Act that the resignation of the Chairman of the Bord should be notified in the Official Gazette as in the case of a member of the Board, it cannot be said that the resignation of Shri Karam Singh did not take effect till it was notified in the official gazette vide notification dated February 12, 1990.

The High Court was, therefore, right in taking the view that Shri Karam Singh had ceased to hold the office of the Chairman of the Board having resigned from the said office on January 31, 1990, and the said resignation became effective from that date itself and that on the date of scrutiny, i.e., February 5, 1990, he was not holding an office of profit. For that reason, it has been rightly held that the nomination of Shri Karam Singh was improperly rejected by the Returning Officer.

Since we are in agreement with the view of the High Court that the nomination of Shri Karam Singh had been improperly rejected for the

A reason that he was not holding the office of the Chairman of the Board on the date of scrutiny, we do not consider it necessary to go into the question whether the office of Chairman of the Board held by Shri Karam Singh had ceased to be an office of profit after January 8, 1990.

The appeals, therefore, fail and are, accordingly, dismissed. But in the circumstances with no orders to costs.

B.V.B.D. Appeals dismissed.